Bail Slip

Crl.A.No.370/1999

The Appellants 1 to 4 viz. Ramasamy, Sengeni, Nagooran and Rajendran are directed to be released on bail as per order of this Court dated 19.11.1999 in Crl.M.P.No.8467 of 1999 in CA No.370/1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.370 of 1999

1.Ramasamy
2.Sengeni
3.Nagooran
4.Rajendran ..Appellants/Accused

-vs-

State by the Inspector of Police
Mamallapuram. .. Respondent/Complainant

This appeal is filed against the Judgment made in S.C.No.116/1997 dated 16.4.1999 on the file of the Court of Principal Sessions Judge, Chenglepet.

For appellants : Mr.K.Veera Raghavan

For respondent : Mr.V.R.Balasubramanian,APP.

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JUDGMENT

This appeal arises out of the Judgment in S.C.No.116 of 1997 on the file of the Court of Principal Sessions Judge,Chenglepet.

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:

On 28.3.1996 at about 8.15.a.m., A1 to A4, due to previous enmity with

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an intention to cause the death of one Arasappan, have assaulted him with a stick causing the grievous injuries all over his body which resulted in his death on the same day in the hospital.

3.P.W.1 is the complainant. According to P.W.1, the deceased is his brother and there was no previous enmity between the accused and the deceased. On 28.3.1996 at about 8.15 a.m., when he was proceeding to Mahabalipuram to pay the electricity consumption charges, via., Kadumpadi Tank Bund, all the four accused wrongly restrained him, acacia stick and immediately accusing him and his brother Arasappan who was also accompanied him at the time of occurrence and A1 assaulted Arasappan on the left side of the head with stick and also on the left hand ; A2 also assaulted the deceased Arasappan on the left leg;A3 assaulted Arasappan on the left leg and nose and A4 assaulted Arasappan on the right side of the head ,left shoulder, and both hands causing bleeding injuries. Thereafter they also assaulted him(P.W.1) with the same acacia stick and A4 had also assaulted him(P.W.1) on the head left flank on both hands and the occurrence was seen by the vegetable hawkers Chandra, Navaneetham and Indirarani and that immediately they proceeded to Mahabalipuram Police Station and preferred a complaint Ex P1. The police have admitted them in the Government Hospital, Chenglepet for treatement but Arasappan died on the same day at about 1.30p.m., without responding to the treatment.

3a)P.W.2 is an eye witness to the occurrence and also an injured witness, who would depose that the deceased Arasappan was attacked by A1 Ramasamy on the left side of the head and the left hand with a stick; A2 Sengeni had assaulted Arasappan on the left ear ; A3 Nagooran had assaulted Arasappan on the eye and nose with a stick and A4 had assaulted Arasappan with acacia stick causing bleeding injuries and would also depose that the accused have assaulted him (P.W.2) on the head, right hand and left eye and both hands causing injuries and that A4 had chased P.W.1 Balasundaram and assaulted on his fore head, left flank and on the head with acacia stick and the occurrence was witnessed by the vegetable hawkers Indirani, Navaneetham and Chandra and that the complaint was preferred by P.W.1.

3b) P.W.3 who is the occurrence witnesss would depose that on the date of occurrence at about 8.15 a.m., while she was proceeding on the bund, she saw P.Ws1,2 and deceased were going along the Bund towards Mahabalipuram and suddenly, the accused came from behind each of them had assaulted with acacia stick on the head and nose. According to her, A1 had assaulted on the head and both hands of Arasappan , A2 had assaulted Arasappan on the right side of the ear, A3 had assaulted Arasappan on the left eye brow and on the nose and on the right ear and that the abovesaid four accused assaulted P.W.1 and P.W.2 causing injuries and that she had raised distress call.

3c) P.W.4 is also an eye witness to the occurrence. According to

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her, while she was proceeding on the bund of the tank on the date of occurrence at about 8.15 a.m., she saw the deceased Arasappan, P.Ws 1 and 2 proceeding towards Mahabalipuram on the bund of the tank were chased by the accused, and all the four accused have assaulted Arasappan and A1 had assaulted Arasappan on the head, lelft hand and left leg, A2 had assaulted right side ear; A3 had assaulted left side of the eye brow and nose; and A4 had assaulted on the left eye of Arasappan who fell unconscious due to the attack. Thereafter, the accused have also assaulted P.Ws 1 and 2 causing simple injuries with stick and that the injured were taken to bus stand where the police were informed through phone from the house of the Village Administrative Officer.

3d) P.W.5 and P.W.6 even though cited by the prosecution as independent eye witnesses, they have not supported the case of the prosecution. Hence the Addittional Public Prosecutor has treated them as hostile witnesses.

3e) P.W.7 is the Doctor who had admitted and treated the deceased Arasappan on 28.3.1996 at about 1.15p.m., while he was on duty in Chengleput Government Hospital. He would depose that Arasappan died on 1.30p.m., without responding to the treatment. Ex P2 is the death intimation given by him to the police. He has also treated,P.W.1 as an inpatient for the injuries, he had sustained and he(P.W.1) was discharged from the hospital on 4.4.1996. Ex P3 is the wound certificate relating to P.W.1 issued by P.W.7, the Doctor.

3f) P.W.8 is the Doctor who had conducted an autopsy on the corpse of Arasappan. Ex P5 is the postmortem report which contain the following injuries on the corpse of the deceased.

> "1.Abrasion on the upper part of left shoulder joint 1 ½ x ½ cms reddish brown in colour.O/D contusion of soft tissues underneth the abrasion 2 x ½ cms reddish in colour.
> 2.An obliquely placed reddish abrasion on the posterior surface of left side chest close to medial order of left scapular spine 2 x ½ cm.O/D subcutaneous soft tissues contused 3 x 3 cms.
> 3.Reddish abrasion on the middle 3rd of right scapular spine 2 x 1 cm O/D subcutaneous tissues found contused 3 x 2 cms.
> 4. Reddish abrasion with loss of cuticle on the posterior midline of back of chest at the level of T.5 vertebral spine.O/D underlying structures intact.Pale.
> 5.Sutured wound on the peripheral part of

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curvature of right ear pinna 7 cms above the right ear lobe. Tow sutures in tact.On removal of sutures, the wound-gaping reddish. Margins-irregular.Deep to cartilage 0.75 x ½ cm cartilage, deep obliquely placed.

6. Sutured wound seen on left side forhead close to the lateral part of the left eye brow,vertically placed in which two sutures in tact. On removal of sutures, the wound-gaping, margins irregular 1 x ½ cm bone deep.

7. Sutured wound on the peripherall margin of (torn) pinna 6 cms above the left ear lobe in which two sutures in tract. On removal of sutures the wound-gaping 1 x ½ x ½ cm deep to cartilage. Margins irregular with abradedness.(Lacerated wound).

8. Sutured wound on the left parietal region 9 cms above the
upper part of left ear pinna in which 2 sutures in tact, on removal of sutures, the wound gaping 1 x ½ cm muscle deep. Subcutaneous tissues contused.Dark red in colour.

9. Both eyelids of left eye-contused.

10. Transversely placed dark brown abrasion on the lateral surface of left side face extending from left ala of the nose towards the lateral surface of left maxillary region 10 x 11 cms at its centre a sutured wound on the left maxillary region along the middle 3rd of abrasion with a single suture. On removal of suture, the wound-gaping , reddish, Margins-irregular ½ x ½ cms subcutaneous deep

11. Contusion on the anterior wall of upper part of abdomen across the midline transversely placed 10 cms above the umbilcus 4 x 2 cms muscle deep, reddish.

12. Peritoneal cavity contained 170 ml of fluid blood.

13. Contusion on the left side posterior surface of the lumbar region, reddish, 10 x8 cms muscle deep. On further exam, fracture of left 12th x 11th ribs as well as fracture of 6 to 10 ribs at its posterior part.

14. Contusion of Peripheric pad opf fact of left kidney seen.O/D transversly placed laceration at the level of Uretro-pelvic junction 1 ½ x ½ cm deep to the uretro-pelvic junction.

15.Multiple subscapular lacerations on the posterosuperior surface of right lobe of liver 6 x 5 cms subscapular deep.

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16. O/D Scalp:Calvarium-intact.Dura Intact. Brain: Oedematous.Multiple petechial haemorrhage seen on the campus colossum of the brain c/s CSF-stained with blood. Base:intact."

3g) P.W.9 is the doctor who had treated P.W.1 on 28.3.1996 at about 11.50a.m., in the Government Hospital, Chengleput. The injured had informed him that he was assaulted by four known persons on the same date at about 7.30 a.m.,. Ex P6 is the wound certificate issued by P.W.9 to P.W1 which contain the following injuries.

"1. Contusion 10 cm x 10 cm left front of the abdomen. Blueish in colour.
2. A lacerated wound ½ cm x ½ cm left parietal regioon of the scalp."

He has also treated Arasappan before his death at about 12.00 noon on the same date and issued Ex P7 copy of the accident Register .The following injuries were noted.

"1. A cut injury 1" near left ear.Fresh bleeding present.
2. Abrasion ½" x ½" left shoulder.
3.A lacerated wound 1" x 1 ½" left side of the forehead.
4. Contusion over the left eye. Blueish in colour.
5. A lacerated wound 1" x 1" x ½ left parietal region of the scalp.
6. Abrasion ½" x ½" right side of the back.
7.Bleeding from both nostrils."

P.W.2 was also treated by P.W.7 and P8 is the copy of the accident register relating to P.W.2. The following injuries were found in Ex P8.

"1. Contusion 6 cm x 4 cm with cut injury left eyebrow.
2. Diffuse contusion over the right side of the face 8 cm x 5 cm.
3. A small cut injury 1 cm right side of the face.
4. Abrasion ½ x ½ cm right parietal region of the scalp.
5. Abrasion ½ cm x ½ cm left occupital region of the scalp.
6. Contusion 4 cm x 4 cm right supra scapular region.
7.Contusion 4 cm x 4 cm lelft supra scapular
8.Contusion 3 cm x 3 cm left lower end of upper arm.
9. Contusion 7 cm x 5 cm proximal ½ of the right forearm.

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3h) P.W.10, the Doctor working in Orthopaedic Department, Government Hospital, Chengalput. He would depose that he knows the signature of Dr.Muthiah who was working in the same department previously and that Dr.Muthiah had examined the injured Murugesan (P.W.2) on 8.3.1996 and Ex P9 is the wound certificate.Ex P10 is the report given by Dr.Muthiah in respect of the injuries sustained by P,.W.2 on the left elbow which reveal that he had sustained grievous injuries and fracture below the left elbow. P.W.11 has not supported the case of the prosecution hence he was treated as a hostile witness.

3i)P.W.12 is the then Sub Inspector of Police, Mahabalipuram Police Station who has deposed that after receiving the complaint Ex P1 from P.W.1, he registered a case in Mahabalipuram Police station in Crime No. 316/1996 under Sections 341,323,506(ii) IPC.Ex P11 is the First Information Report and he sent the injured to the Government Hospital, Chengleput for treatment and proceeded to the place of occurrence and prepared Ex P12 Observation mahazar and had drawn a rough sketch Ex P13 and examined the witnesses and recorded their statement. After receiving intimation from the hospital, about the death of Arasappan, he has altered the first information report into an offence under Section 302 IPC and sent Express First Information report to the Judicial Magistrate and concerned officials under Ex P14.

3j) P.W.13 is the Inspector of Police who took up the investigation in this case On 28.3.1996 at 7.00p.m., after receiving Exs P11 and P14 First information reports, on the next day ie., 29.3.1996 at about 8.00a.m., he proceeded to the Government Hospital, Chengalput and conducted an inquest to the corpse of Arasappan in the presence of Panchayatars between 8.oo a.m., and 10.00 a.m., Ex P15 is the inquest report. He sent the corpse through police constable Kasinathan for postmortem with a requisition Ex P4. He has received the material objects M.O 1, and M.O.2 under Form 95 which were produced by the postmortem constable after postmortem. He had arrested A1 to A3 on 4.4.1996 at about 1.15p.m.,. The material objects were sent to forensic science laboratory for chemical analysis. EX P17 is the requisition letter addressed to the Judicial Magistrate for the said purpose. The Judicial Magistrate along with this requisition letter has forwarded the material objects connected with this case to the forensic science laboratory. Ex P19 is the analyst's report and Ex P20 is the seriologist's report. He had arrested A4 on 4.4.1996 at about 2.30.p.m., in the presence of witness.

3g) P.W.14 is the Inspector of Police who had succeeded P.W.13, had took up investigation and after completing the investigation, has filed the chargesheet against the accused on 12.12.1996 under Sections 341,302,307 and 307 r/w 34 IPC.

4. The case was taken on file by Judicial Magistrate,

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Thirukazhukundram as P.R.C.No.3 of 1997. The learned Judicial Magistrate, furnished copieis to the accused under Section 207 Cr.P.C. and since the case is trible by Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of Sessions under Section 209 Cr.P.C. After the appearance of the accused, the learned Principal Sessions Judge,Chengleput has framed charges under Sections 341,302,307 and 307 r/w 34 IPC and when questioned the accused pleaded not guilty.

5. When incriminating circumstances were put to the accused, they were denied their complicity with the crime.Before the trial Court, P.Ws 1 to 14 were examined. Exs P1 to P20 were marked . On the side of the accused D.W.1 was examined and no documents were marked on the side of the accused and M.Os 1 and 2 were also marked. After going through the evidence, both oral and documentary, after getting satisfied, that the guilt against the accused have been proved beyond any reasonable doubt and that the accused are liable to be convicted under Section 304(ii) IPC the learned trial judge accordingly convicted each of the accused to undergo four years rigorous imprisonment and also slapped with a fine. Aggrieved against the findings of the learned trial Judge, the accused have preferred this appeal.

6. Now the point for consideration in this appeals is, is there any inordinate delay in preferring the first information report which warrants interference from this Court in the finding of the trial Judge?

7.I heard Mr.K.Veera Raghavan, the learned counsel appearing for the appellants and Mr.V.R.Balasubramanian, the learned Additional Public Prosecutor for the respondent and carefully considered their rival submissions.

8. The point:

Mr.K.Veera Raghavan, the learned counsel appearing for the appellants mainly focused the attention of this Court to an inordinate delay of 27 days in preferring the first information report. There are two first information reports Ex p11 and EX P14. Ex P11 is the earliest first information report which was registered on 28.3.1996 at about 10.30a.m., by P.W.12 and the case was registered in crime No.316 of 1996 under Sections 34,323,506(ii) IPC; Ex p14 is the altered first information report which was registered on 28.3.1996 at abaout 4.30p.m., after the death of the victim Arasappan on 28.3.1996 at about 1.30p.m., in the Government Hospital, Chengalput. The charge has been altered into that of Section 302 IPC and the express first information report was registered and sent to concerned officers on 28.3.1996 at 4.30p.m., according to P.W.12. But both the first information report have reached the Court only on 29.3.1996 at 1.05 p.m. Neither the Court clerk nor the Magistrate, who can speak about the receipt of

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information report was not examined in this case. Further the postmortem constable was also not examined. There is no explanation forthcoming from the Investigating Officer to this inordinate delay in sending the Express first information report to the Court.

9. The learned counsel appearing for the appellants would rely on series of ratio-decidenties to show that non explanation of in ordinate delay in sending the FIR is fatal to the prosecution case. He would rely on a decision reported in 1974 Law Weekly(crl.,) 147 one of the earliest dictum on this point available in Kolandaivelu. The learned counsel would contend that if the delay in sending the express first information report to the Court is not explained by the prosecution that will lead to the inference that the investigation was not fairly done by the prosecution. The exact observation by the learned Judge at page 150 para 18 runs as follows:

> "I have given my anxious consideration to this case bearing in mind the effects of an unjustified acquittal, but I find it not possible to accept the prosecution evidence with safety. Indeed , I feel that the witnesses P.Ws 1,2,3 and 5 did not witness the occurrence at all, as they claim, and that the evidence of P.W.4 is also false. The most important reason for my conclusion is that, though the evidence as put forth purports to be cast-iron. Ex D-42, which is in copy of the village Headman's cooking reports of the occurrence, reached the Sub Magistrate at Tiruthuraipundi only at 2.15 p.m., on 16th November 1972 and Ex D-43 which is a copy of the first information report which the Sub Inspector sent to the Sub Magistrate, reached the Sub Magistrate only at 4.10p.m., The delay has not been explained which suggests that Ex P1 did not come into existence at 8.a.m., as it purports, but only later, that it was not registered at the police station at 9.01 a.m., as alleged and that the first information report(ExP1) came into existence only much later."

10. In State of Rajasthan-vs- Teja Singh and others(2001 Supreme Court Cases(crl)439) the Honourable Apex Court of this Country has held that even the intervening public holidays is not an excuse for the delay in sending the first information report. It was contended on behalf of the appellant in the above said dictum that the first information report in question was lodged at about 7.30 p.m., on 15.8.1981 since the said day happened to be a holiday on account of it being the Independence Day and the next Sunday, the Court being closed, the first information report could reach the Court only on Monday

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i.e., on 17.8.1981 hence there was nothing unusual about the delay in sending FIR to the Court. But rejecteing this argument, the learned Judge of the Apex Court have held as follows:-

> " we have examined three eye witnesses as also that of Iqbal Singh(P.W.10), the Investigating Officer. We do not find any reason to differ with the finding of the High Court which sitting as the first Court of appeal on facts, had every right to reappreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned counsel in regard to the delay in the FIR reaching the Court is not tenable because assuming that there were some Court holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the Magistrate concerned without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.

11. For the same point, the learned counsel appearing for the appellants rely on a decision reported in Suresh Chaudhary -vs- State of Bihar(2003 Supreme Court Cases(cri) 801) 1 ½ days delay in sending the first information report to the Magistrate after the registration of complaint was considered to be an inordinate delay and in the absence of any explanation which was held the said delay contributed to the doubtful circumstances surrounding the prosecution case.

12. A case with the similar facts was cited by the learned counsel appearing for the appellants in Kunju Muhammed Alias Khumani and another-vs- State of Kerala(2004 Supreme Court Cases(cri) 1425) . The short facts of the said case is that in an altercation that took place between Kunjumuhammed, P.W.3,Kochunni, P.W.4, Khadarkunju, P.W.5 on one side and Moosakutty,A-2,Ummer,A-3,Ali ,A-4,kochunni,A-5, Ashraf,A-6 and Subair,A-7 on the other, on 3.11.1991 at about 8.15 am., in the north-eastern portion of Korathukudy House No.III/209 of Vengola Panchayat, the accused persons assaulted P.W.4 and P.W.3. At that time,the deceased Majeed came to the place of incident and resisted the said accused from assaulting P.Ws 3 and 4 at which time Ummer, A3 beat Majeed with an iron rod, M.O1 which blow was warded off by Majeed who caught hold of the iron rod and a scuffle ensued between Majeed and Ummer-A3. At this point of time, Kunju Muhammed A1 came to the scene with a fishing sword, M.O.2 and stabbed on the back of Majeed with the same.Majeed having received the said stab injury then allegedly turned towards A1 and caught hold of the sword which was pulled back by A1 who again stabbed Majeed on the left side of his chest. Seeing the assault on Majeed, it is stated Muhammed,P.W2 rushed to the scene but he was intercepted and stabbed by A1 on the right side of the lower part of

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his belly. P.W.2 then caught hold of the sword but he was assaulted by Ummer, A3 on the head with the iron rod. Due to the stab injuries, Majeed died on the spot. It is the case of the prosecution that on the same day at about 8.45 a.m. Sacaria,P.W.1 went to Perumbavoor Police Station which is about 2 to 3 km from the place of incident and lodged a complaint as per Ex F-1. The Assistant Sub Inspector of Police,P.W.18 attached to the said police station recorded Ex P1 and registered Crime No.408 of 1991 he then sent the file to the Circle Inspector of Police,P.W.19 who initiated the investigation of the case and proceeded to the scene of incident at about 9 a.m., and prepared an inquest panchnama as per Ex P6 which was attested by P.W.10 Azeez. The trial Court acquitted the accused. The State preferred an appeal t the High Court of Kerala at Ernakulam which reverse the finding and found that A1 and A2 guilty under Section 302 IPC and convicted and sentenced to undergo life imprisonment. A1 to A3 were also convicted under Sections 323 and 324 r/w Section 34 IPC. On appeal the appellants mainly placed their arguments on the delay of 27 hours in preferring the first information report. While reversing the findings of the High Court, the learned Apex Court have observed as follows:

> "P.W.1 was treated as hostile and cross examined by the prosecution. If this was the sole piece of evidence on which the trial Court relied upon to come to the conclusion that the incident in question might not have taken place at 8.15 a.m., on 3.11.1991, we would have definitely disagreed with the trial Court but then the trial Court also relies on the fact that Ext P1 did not reach the Magistrate's Court at least till the evening of 4.11.1991 as could be seen from the endorsment in the FIR. This omission on the part of the prosecution to explain why the FIR did not reach the Jurisdictional Magistrate till the evening of 4.11.1991 even though the incidient in question had taken place at 8.15 a.m., and reported to the police at 8.45a.m., on 3.11.1991 itself casts a very serious doubt, which lends support to the evidence of P.W.1 that the complaint was got ready only on the midnight of 3.11.1991/4.11.1991. It should be borne in mind that the distance between the Magistrate's Court and the police station being in the same town was very close. Then again it is to be noticed from the evidence of P.W.10, who is admittedly a very close friend of deceased Majeed that on 3.11.1991 at about 7.a.m., which was again a time much earlier than the time of incidient as projected by the prosecution. This also supports the defence version that the incident in question could not have taken place at 8.15 am., We further

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> notice that the doctor, P.W.13 who conducted the post mortem examination had noted that rigor mortis had formed and was found all over the dead body at the time when he conducted the post mortem. He in his evidence had stated that in his opinion rigor mortis sets in within about 4 to 7 hours of the death. If we apply the yardstick as spoken to by P.W.13 of the starting of rigor mortis to the facts of this case then we notice that in the instant case the death must have occurred prior to 8.a.m., because if rigor mortis starts within 4 to 7 hours of death then it would take some time to reach all parts of the body and in the instant case, rigor mortis was found in the entire body of the deceased, therefore, to reach this stage if we take 4 hours as the starting point, it would have taken some more time to reach different parts of the body therefore, we think it is reasonable to take the upper limit of rigor mortis reaching the entire body as 7 hours and if we would backwards then we notice that the death in question must have occurred before 6.30a.m., on 3.11.1991 which actually fifts into the other facts noticed by us hereinabove while discussing the time of death. . . . . .Thus relying on (a) the statement of P.W.1 that the complaint was signed on the midnight of 3.11.1991;(b) the FIR reaching the Jurisdictional Magistrate more than 36 hours after the incident in question though the court is situated in the same town; (c) the evidence of the doctor as to the presence of rigor mortis on the body of the deceased indicating death must have occurred much earlier than 8.15 to 8.30 a.m, on 3.11.1991 and (d) recording in the inquest report Ext P-6 that the body of the deceased when examined was found to be cold and frozen; we find that the conclusion arrived at by the prosecution is a probable one.

So on the basis of the non explanation of delay of 36 hours , the Apex Court have held that the benefit of doubt must go to the appellants and has allowed the appeal and consequently acquitted the accused.

13. In another case 29 hours delay on receipt of first information report reaching the Sub Magistrate was considered to be inordinate delay to throw away the case of the prosecution Marudanal August-vs-State of Kerala(1980 Crl.L.J.446= AIR 1980 Supreme Court 638) wherein the Honourable Apex Court have held as follows:

> "The facts of the case have been fully detailed

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> in the Judgment of the Sessions Court and the High Court and it is not necessary for us to repeat the same all over again. The trial Court appears to have acquitted the appellant on the ground that there were certain infirmities in the investigation conducted by the police Officer. The manner in which the FIR was lodged, the delay in despatch of the F.I.R. And the delay on the part of P.W.1 in getting the injuries examined by the Doctor, were features which according to the Sessions Judge, were so gravely suspicious that they went to the root of the matter. . . . . .The most serious infirmity which appears in the case is although the FIR was lodged in the midnight of 23/24 -6-1971.It was despatched to the Sub Magistrate at 5.30 a.m., on the 25th June 1971 that is to say there is delay of as many as 29 hours in receipt of the FIR by the Sub Magistrate... . . . . . The High court seems to have ovoerlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.

Only on the ground of 29 hours of unexplained delay in receipt of the FIR by the Sub Magistrate giving benefit of doubt , the Apex Court has allowed the appeal and acquitted the appellants.

14. For the same point, the learned counsel appearing for the appellants would rely on a decision reported in Karunakaran Jabamani nadar In re(1974 L.W.(crl)190) wherein it has been held as follows:

> " It is imperative that the following documents should be despatched immediatley, without any delay by the investigating officiers to the Sub magistrate. The Station House Officer should record the time of the actual despatch of the various documents in the various registeres particularly the statement recorded under Section 154 of the Cr.P.C., On receipt of the said documents, the Magistrate should initial the same, noting there in the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes.
> 1) The original report or complaint under Section

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154 Cr.P.C
2) The printed form of the FIR (first information report)prepared on the basis of the said report or complaint.
3)Inquest reports and statements of witnesses recorded during the inquest
4) Memo sent by the Station House Officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case treatment.
5) Memo sent by the doctor to the police when a person with injuries is brought to the hospital, or the death-memo sent by the doctor to the police on the death of the person admitted into the hospital with injuries.
6) Observation mahazars and mahazars for the recovery of material objects search lists and the statements given by the accused admissible under S.27 of the Evidence Act etc., prepared in the course of the investigation.
7. The statementns of witnesses recorded under s.161(3) of the Crl.P.C.
8) Form No 91(Now Form No.95) accompanied by material objects."

In the above case, the learned Sub Magistrate has omitted to put his initial with date on the above said documents which are supposed to be material documents to prove the guilt of the accused beyond any reasonable doubt. But in the case on hand in both the F.I.Rs Ex P11 and Ex P14 even though they were lodged on 28.3.1996 at about 10.30 a.m and 1.05 p.m., respectively they have reached the court only on 29.3.1996 at 1.05p.m., ie after an unexplained long delay of 27 hours which I considered to be fatal to the case of the prosecution.

15.The learned Additional Public Prosecutor relied on a decision reported in Dalbir Singh and others-vs-State of Punjab(AIR 1987 Supreme Court 1328) and contended that even 16 hours delay was not considered by the Apex Court as an inordinate delay. But the facts are different because in the above said dictum, the investigation officer has recorded dying declaration of the victim before his death and the investigation Officer was in a position to explain the reason for the delay.Even in this case FIR Constable was not examined to explain the delay. Even though in the Investigation Officer P.W.13 has not given any explanation for the delay in sending FIR to the Court.Apart from this, there are also discrepancies in the evidcence of P.W.9 and P.W.10, the doctors who have examined the injured witness P.W1 and P.W.2 respectively. According to P.W.9 at the time of treatment has informed to him that he was assaulted by four known persons whereas P.W.2 who had sustained injury in the same place of occurrence at the

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same time, has stated before P.W.10 at the time of treatement that some unknown persons have assaulted him. The learned Additional Public Prosecutor informes this Court that the distance between Mahabalipuram Police Station and the Court at Thirukazhukundram is 15 km., There is no possibility for sending FIR after an inordinate delay of 27 hours from the police station to the Judicial Magistrate Court. Under such circumstances, I am of the view that non explanation of the inordinate delay of 27 hours is fatal to the case of the prosecution. Point is answered accordingly.

16. In fine, the appeal is allowed setting aside the Judgment in S.C.No.116 of 1997 on the file of Principal Sessions Judge,Chengalput. The accused are set at liberty forthwith, if they are not required in any other case. Fine amount, if any paid, shall be refunded to the accused. Bail bond executed by the appellants shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Principal Sessions Judge,Chengalput.
2.The Judicial Magistrate,Thiruzhukundram
3. -do- through the Chief Judicial Magistrate, Chengalput.
4 The Superintendent, Central Prison, Cuddalore.
5. The Public Prosecutor, High Court, Madras-104
6.The Inspector of Police,
Mamallapuram Police Station.

+1cc to Mr.K.Veerarghavan, Advocate Sr 9352

AVA (CO)
km/26.2.

Crl.A.No.370 of 1999

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